

ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In Re )

Amendment of Section 73.202(b) )

Table of Allotments,  
FM Broadcast Stations  
(Essex, CA) )

MM Docket No. 92-194

RM-8052

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Chief, Allocations Branch

**REPLY COMMENTS OF DUNES BROADCASTING**

Dunes Broadcasting, pursuant to the Commission's Notice of Proposed Rule Making herein, DA 92-1060, released September 8, 1992, hereby submits its reply comments in this matter.

The only comment to have been filed in this case, other than Dunes' own supporting comments, was submitted on behalf of David A. Petrick [also spelled as "Petrik" in the signature block and associated engineering exhibit]. Mr. Petrick's pleading consisted of both comments and a counterproposal. The Commission has not yet accepted Mr. Petrick's counterproposal, and Dunes will file comments on that aspect of Mr. Petrick's pleading if and when it is accepted by the Commission and placed on public notice. In the meantime, though, Dunes submits herewith its reply to the portion of Mr. Petrick's pleading which consists of comments on the Dunes proposal.

Mr. Petrick contends that the Notice of Proposed Rule Making was in error in assuming that Essex is a community for allotment purposes and suggests that Dunes should bear the burden of so demonstrating.

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Mr. Petrick's contentions are clearly foreclosed by the Commission's previous determination with respect to the community of Essex. Attached hereto is the Commission's Report and Order in MM Docket No. 88-397, 4 FCC Rcd 8084, released November 14, 1989, by means of which Essex received its first class B FM channel allotment. In the earlier proceeding, the Commission had requested the submission of community information, and was satisfied that the Commission's threshold had been met. Id. at ¶ 4. The Commission characterized Essex as "a fairly vibrant community" and noted that Essex was situated so as to provide service to substantial surrounding areas. Id. at ¶ 6. The Commission ultimately concluded that Congressional intent in enacting Section 307(b) of the Communications Act would be frustrated were the Commission to decline to distribute frequencies to communities such as Essex. Id. ¶ 6.

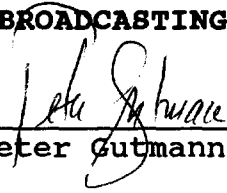
Despite Mr. Petrick's suggestion, he has provided no basis upon which the Commission's determination of only three years ago with respect to Essex should be overturned. Therefore, the Commission may rely in full confidence upon its prior determination. There is no need for Dunes to "reinvent the wheel" as the Commission has already determined Essex to be a community qualified to receive an FM allotment.

In view of the foregoing, the Commission should reject Mr. Petrick's comment that the community of Essex should not receive the requested allotment of Channel 280B.

Respectfully submitted,

**DUNES BROADCASTING**

By: \_\_\_\_\_

  
Peter Gutmann

Its Attorney

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November 16, 1992

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 88-397

In the Matter of

Amendment of Section 73.202(b), RM-6326  
Table of Allotments,  
FM Broadcast Stations.  
(Essex, California)

**REPORT AND ORDER**  
(Proceeding Terminated)

Adopted: October 19, 1989; Released: November 14, 1989

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 5403 (1988), proposing the allotment of Channel 255B to Essex, California, as that community's first local broadcast service. Howard B. Anderson, the petitioner for the allotment of Channel 255B, filed comments and stated an intention to apply for the channel, if allotted.

2. Since Essex, California, is located within 320 kilometers (199 miles) of the US-Mexico border, the Commission obtained concurrence of the Mexican Government in the proposal.

3. A staff engineering analysis indicates that Channel 255B can be allotted to Essex, California, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules,<sup>1</sup> provided the transmitter is located at least 3.1 kilometers (1.9 miles) north of the community to avoid short-spacing to Channel 255B, Cuervos, Baja, Mexico.<sup>2</sup>

4. The *Notice* requested the petitioner to provide sufficient information to demonstrate that Essex has social, economic or cultural indicia to qualify it as a "community" for allotment purposes since it is not listed in the U.S. Census. In support of its proposal, petitioner states that Essex is a community with civic, charitable, religious, educational, and social institutions, municipal services, and a post office to serve its residents. The community of Essex operates the Essex School for children in grades kindergarten through eighth. There is a parent-teacher organization at the school. Also, there is a social square dance club that holds dances every Saturday night at the school. There is a Cub Scout Pack and a Girl Scout Troop in Essex. The First Baptist Church is located in the community. In addition, Essex has a post office with its own zip code of 92332, and is listed in the telephone directory under the "Upper Mojave". The community receives its electric service from Southern California Edison. Essex is listed in the Rand McNally Commercial Atlas with a population of 75 persons.

5. The *Notice* also requested the petitioner to clarify whether he intends to discharge his primary service obligation. In comments, the petitioner stated an intention

to discharge his primary service obligation in order to serve the needs and interests of the community of Essex, and, in addition, to serve the large mobile population travelling daily along Interstate 40.

6. Given its small size, it is not surprising that the list of social and cultural institutions in Essex is relatively small. Indeed, considering the population of Essex and in the surrounding areas, it appears to be a fairly vibrant community.<sup>3</sup> Congressional intent in enacting Section 307(b) of the Communications Act in its present form was to provide the Commission with greater discretion in distributing frequencies, and to remove uniform but somewhat artificial barriers to the initiation of service in sparsely populated areas.<sup>4</sup> Given the circumstances discussed above, were we to deny Essex community status we would frustrate Congressional intent.

7. Based on the information submitted by the petitioner, we believe it is sufficient to establish that Essex qualifies as a community for allotment purposes. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 29, 1989**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Essex, California	255B

8. The window period for filing applications for Channel 255B at Essex, California will open on **January 2, 1990**, and close on **February 1, 1990**.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Ordee Pearson, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

FOOTNOTES

<sup>1</sup> Coordinates for Channel 255B at Essex are 34-45-51 and 115-15-07.

<sup>2</sup> Reference coordinates of Channel 255B at Cuervos are 32-37-35 and 114-51-03.

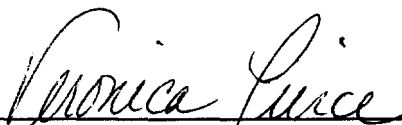
<sup>3</sup> We take official notice of the fact the areas surrounding Essex are sparsely populated.

<sup>4</sup> See, e.g., H.R. Rep. No. 2589, 74th Cong., 2nd Sess. 3 (1936).

**CERTIFICATE OF SERVICE**

I, Veronica Pierce, do certify that on this 16th day of November, 1992, I served copies of the foregoing "Reply Comments of Dunes Broadcasting" by U.S. Mail upon the following:

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Veronica Pierce